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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,861	11/19/2003	Otto Gosweiler	010564/00081	5610
76/070 7590 09/01/2010 WHITEFORD, TAYLOR & PRESTON LLP 7 ST. PAUL STREET BALTIMORE, MD 21202-1636				
EXAMINER				
PATEL, NIHIR B				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/715,861

Applicant(s)

GOSWEILER, OTTO

Examiner

NIHIR PATEL

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-25, 38 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-25, 38 and 40 is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed June 16th, 2010 have been fully considered but they are not persuasive. The applicant argues that Delache does not disclose a manually adjustable control functionally connected to the processor; wherein the manually adjustable control transmits operational signals to the blower to supplement signals transmitted to the blower by the processor. The examiner disagrees with the applicant's argument. The examiner would like to point out that Figure 1 and column 5 lines 8-15 of the Delache reference discloses an microprocessor that controls the blower control system and column 14 lines 15-25 recites that "the gas flow generator can include a communication port allowing an external computer to be linked to the system for remote display and/or control of the gas flow generator" It would have been obvious to one having ordinary skill in the art that to use external computer is as the manually adjustable control functionally connected to the processor which it is as the external port indicates; wherein the external computer transmits operational signals to the blower to supplement signals transmitted to the blower by the internal processor 32.

Response to Amendment

2. The examiner acknowledges the amendment filed on June 16th, 2010. The amendment comprising amending claims 1, 14 and 38; and cancelling claims 10, 26-37, 39, 41 and 42.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delache et al. (US 6,644,310).

6. **As to claim 1**, Delache substantially discloses an apparatus that comprises a gas mask **14** (see fig. 1; col. 4 lines 30-35) having a filter port used to provide filtered air (see col. 14 lines 5-10); a blower **22** (see col. 4 lines 45-50) operatively connected to the filter port of the gas mask (see fig. 1; col. 14 lines 5-10), the blower being capable of forcing air to the gas mask (see fig. 1); a detection **46** and control device **24** operatively connected to the blower which detects a pressure condition within the gas mask and controls operation of the blower (see fig. 1; col. 4 lines 60-67); and a manually adjustable control functionally connected to the blower; wherein the manually adjustable control transmits operational signals to the blower to supplement signals transmitted to the blower by the processor (**Figure 1 and column 5 lines 8-15 of the Delache reference discloses an microprocessor that controls the blower control system and column 14 lines 15-25 recites that "the gas flow generator can include a communication port allowing an external computer to be linked to the system for remote display and/or control of the gas flow generator"** it would have been obvious to one having ordinary skill in the

art to use the external computer as the manually adjustable control functionally connected to the processor which it is as the external port indicates; wherein the external computer transmits operational signals to the blower to supplement signals transmitted to the blower by the internal processor 32.).

6. **As to claim 2**, Delache substantially discloses an apparatus wherein an internal motor operates the blower (see fig. 1; col. 4 lines 45-50).
7. **As to claim 3**, Delache substantially discloses an apparatus wherein the motor of the blower is driven by a power source (see fig. 1; col. 4 lines 50-55).
8. **As to claim 4**, Delache substantially discloses an apparatus wherein the power source 26 is portable (see fig. 1; battery 26 can be defined as portable).
9. **As to claim 5**, Delache substantially discloses an apparatus wherein the power source is one selected from a group consisting of a battery, a solar power pack, and an electrochemical reaction pack (see fig. 1; battery 26 can be defined as portable).
10. **As to claim 6**, Delache substantially discloses an apparatus wherein the power source is connected to a processor (see fig. 1; the figure shows that the processor 32 cannot be turned on until the power source is either plugged in to an outlet (AC Power Main) or operated by a fully charged battery (DC Power) indicating that inherently the power source is connected to a processor).
11. **As to claim 7**, Delache substantially discloses an apparatus wherein the power source is connected to the processor via a conductive element (see col. 4 lines 50-56).
12. **As to claim 8**, Delache substantially discloses an apparatus wherein the power source and the processor are integrated to form a single unit (see fig. 1; the fact that the processor cannot

be turned on without the power supply implies that the power source and the processor are integrated to form a single unit).

13. **As to claim 9**, Delache substantially discloses an apparatus wherein the processor and the blower are connected by a coupling (see fig. 1; col. 4 lines 50-55).

14. Claims **11, 12 and 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Delache et al. (US 6,644,310) in view of Piorkowski et al. (US 4,676,236).

15. **As to claims 11, 12 and 13**, Delache substantially discloses the claimed invention; see rejection of claim 1 above, but does not disclose an outflow valve integrated with the mask which releases air within the mask when the outflow valve is in an open position and retains air within the mask when the outflow valve is in a closed position. Piorkowski discloses an apparatus that does provide disclose an outflow valve integrated with the mask which releases air within the mask when the outflow valve is in an open position and retains air within the mask when the outflow valve is in a closed position (see col. 4 lines 5-25). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Delache's invention by providing an outflow valve integrated with the mask which releases air within the mask when the outflow valve is in an open position and retains air within the mask when the outflow valve is in a closed position as taught by Piorkowski in order to prevent the backflow of air during exhalation and prevent loss of air to atmosphere during inhalation.

Allowable Subject Matter

18. Claims **14-25, 38 and 40** are allowed. In reference to claims 14-25, the prior art does not disclose the detection and control device that comprises an optoelectric device that detects a position of the outflow valve of the mask. In reference to claim 38, the prior art does not disclose

a pressure sensor positioned inside the gas mask that detects air pressure in the gas mask in combination with an optoelectric device that is positioned in the mask at a location suitable for detecting the open and closed position of an outflow valve linked to the gas mask, wherein the optoelectric device and the pressure sensor work cooperatively. In reference to claim 40, the prior art does not teach an optoelectric device disposed in the mask at a location suitable for detecting the open position or closed position of the outflow valve and operatively connected to the blower, wherein the optoelectric detects a pressure condition within the gas mask and controls an operation of the blower.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772